

AGREEMENT
VERNAL POOL NUMBER 1 RESTORATION

THIS AGREEMENT, dated Oct. 1, 1996, is made by the CITY OF COSTA MESA, a political subdivision of the State of California, (CITY) and The Irvine Company, Post Office Box 6370, Newport Beach, CA 92658-6370 (TIC).

W I T N E S S E T H :

WHEREAS, CITY proposes to grant a license to TIC to have the above-mentioned firm provide services for the restoration of Vernal Pool Number 1 located within Fairview Park as described in Exhibit "A" of this contract; and

WHEREAS, TIC is undertaking this restoration program in order to mitigate biotic habitat impacts on TIC property, as outlined in the University Research Park Vernal Pool/Fairy Shrimp Habitat Restoration Program; and

WHEREAS, TIC represents that it has that degree of specialized expertise contemplated within California Government Code, section 37103, and holds all necessary licenses to practice and permits to perform the services herein contemplated; and

WHEREAS, CITY and TIC desire to contract for specific services in connection with the project described above; and

WHEREAS, no official or employee of CITY has a financial interest, within the provisions of California Government Code, sections 1090-1092, in the subject matter of this Agreement; and

WHEREAS, the parties desire to set forth their rights, duties and liabilities in connection with the services to be performed.

NOW, THEREFORE, the parties agree as follows:

1. CITY shall grant to TIC a five (5) year license to Vernal Pool Number 1 of Fairview Park and adjacent areas necessary to accomplish the restoration, monitoring and maintenance of Vernal Pool Number 1 as described in Exhibit "A." The license area is identified in Exhibit "B" and incorporated herein by this reference. This license shall not be revocable for the five (5) year term unless either party terminates this agreement as provided in paragraph 26.

2. TIC shall provide all restoration, monitoring and maintenance services described in Exhibit "A" at TIC's expense and TIC shall obtain all permits and pay to CITY a one-time permit fee of \$27,500 as set forth in Exhibit "A" which is incorporated herein by this reference.

Ex. B

3. This contract documents consists of this agreement and its exhibits, the University Research Park Vernal Pool/Fairy Shrimp Habitat Restoration Program and permits by the State of California and United States Army Corps of Engineers. In the event of a conflict between the contract documents, the following order or precedence shall apply:

- A. This agreement and the exhibits.
- B. Permits.
- C. TIC proposal.

This agreement may be modified only in writing and signed by the parties in interest at the time of such modification. The terms of this agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto.

4. TIC shall commence work on the date this agreement is executed and shall continue per the schedule set forth in Exhibit "A" until all tasks are completed with a five (5) year period or until this agreement is terminated.

5. TIC agrees that CITY will not be responsible for any costs associated with the restoration project as set forth in Exhibit "A" and will not pay for any work unless a Change Order to the agreement has been issued authorizing such payment and approved by City's City Council.

6. TIC shall designate a Project Director who shall represent it and be its agent in all consultations with CITY during the term of this agreement. The Project Director shall be subject to the approval of CITY and shall not be changed without the written consent of the City's Project Manager. TIC Project Manager shall attend and assist in all coordination meetings called by CITY.

7. At least one (1) set of project permits, plans, drawings, reports, field and office notes, correspondence, calculations, maps, and other documents related to the restoration project shall be turned over to and become the property of CITY upon completion of the project.

8. No regular employee of CITY will be employed by TIC while this Agreement is in effect.

9. In performing this Agreement, TIC will not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex, except as permitted pursuant to section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, section 1735.

10. A. TIC shall protect, defend, indemnify and hold harmless CITY and its elected and appointed boards, officers, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person, and for injury to any property, including consequential

damages of any nature resulting therefrom, arising out of or in any way connected with the negligent performance of this Agreement by act or omission, by or on behalf of TIC, or resulting from any violation by TIC of any statute, law, regulation, or other legal requirement concerning a safe place of employment for workers.

B. CITY shall protect, defend, indemnify and hold harmless TIC and its elected and appointed boards, officers, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person, and for injury to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the negligent performance of this Agreement by act or omission, by or on behalf of CITY, or resulting from any violation by CITY of any statute, law, regulation, or other legal requirement concerning a safe place of employment for workers.

11. TIC shall perform the services herein contemplated in compliance with the Federal and California laws concerning minimum hours and wages (Davis-Bacon Act, 40 U.S.C. 276a et seq. and California Labor Code, sections 1171 et seq.), occupational health and safety (29 USC 651 et seq. and California Labor Code, sections 6300 et seq.), fair employment practices (29 USC 201 et seq. and California Government Code, sections 12900 et seq.), Worker's Compensation Insurance and Safety in Employment (Divisions 4 and 5 of the California Labor Code) and all amendments thereto, and all similar State or Federal laws to the extent that they are applicable; and TIC shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including attorney's fees and costs, presented, brought, or recovered against CITY, for or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of any work performed by TIC under this Agreement.

12. TIC, and its assignees and contractors, shall obtain and maintain during the life of this Agreement all of the following insurance coverage:

(a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, and blanket contractual liability, and each of the following except as may be stricken out by CITY'S Project Manager: independent contractors, personal injury; and

(b) Automobile liability for owned vehicles, and each of the following, except as may be stricken out by CITY'S Project Manager: Hired, and non-owned vehicles.

Endorsements shall be obtained for the policies providing the above insurance for the following three provisions:

(i) Additional Insured:

"The City of Costa Mesa and its elected and appointed

boards, officers, agents, and employees are additional insured with respect to this subject project and contract with CITY."

(ii) Notice:

"Said policy shall not terminate, nor shall it be canceled, nor the coverage reduced, until thirty (30) days after written notice is given to CITY."

(iii) Other Insurance:

"Any other insurance maintained by the CITY OF COSTA MESA shall be excess and not contributing with the insurance provided by this policy."

The policy limits on all the above shall be not less than \$1,000,000, combined single limits, per occurrence and aggregate.

13. In addition to the insurance coverage in Paragraphs 11 and 12, above, TIC, and its assignees and contractors, shall obtain and maintain, during the life of this Agreement, Workers' Compensation Insurance in statutory amount.

14. TIC, and its assignees and contractors, shall provide to CITY certificates of insurance showing the insurance coverage described in Paragraphs 11, 12 and 13, above, in a form and content approved by CITY, prior to beginning work under this Agreement.

15. TIC is and shall be acting at all times as an independent contractor and not as an employee of CITY. TIC shall secure, at its expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for TIC and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

16. CITY shall assign a Project Manager or his designee to work directly with TIC. CITY shall make available all necessary documents and records to TIC concerning Vernal Pool Number 1 and archeological site ORA-58 to effectuate performance by TIC under this Agreement.

17. In the event of written authorization by CITY'S Project Manager of changes from the work as indicated in Exhibit "A", or of other written permission authorizing additional work not contemplated herein, TIC agrees that no compensation shall be allowed for such extra work to the extent it relates to the original scope of this Agreement.

18. TIC shall submit progress reports on an annual basis to CITY'S Project Manager. Each progress report shall set forth the details, the services or activity rendered during the proceeding year and the status of restoration for Vernal Pool Number 1. The progress reports are to be sent to:

Don Lamm
Development Services Director
City of Costa Mesa
77 Fair Drive
Post Office Box 1200
Costa Mesa, CA 92628-1200

19. Any work relating to soils engineering, foundation engineering, geological surveys or reports, soil investigations, soil testing, or compaction certification, except for the services outlined on Exhibit "A", is specifically excluded from the services proposed herein and must be contracted for by CITY under separate contract.

20. All work shall be done in a good and workmanlike manner, and CITY reserves the right to terminate services at any time for cause, and whether or not the work has been completed. Any termination and any special instructions from the CITY shall be made through its Project Manager, on sixty (60) days written notice, and may be delivered in person to TIC or mailed to TIC'S present business address. In the event this Agreement is terminated, all drawings, designs, specifications, and appurtenant data prepared for the project shall become the property of CITY and may be used by CITY without additional cost to CITY. Should CITY decide to terminate this Agreement for any reason, TIC shall be entitled to payment on an hourly basis in accordance with the rate schedule herein for work completed prior to written notification.

21. This is a personal service contract, and the supervisory work shall not be delegated to any person or entity without the consent of CITY; but TIC may employ field crews, crew chiefs, and other personnel to perform actual services hereunder.

22. TIC may assign, transfer, sublet or encumber all or any part of TIC'S interest in this Agreement, but without release of TIC from its obligations under this Agreement, without CITY'S prior written consent. Regardless of CITY'S consent, no subletting or assignment shall release TIC of TIC'S obligation to perform all other obligations to be performed by TIC hereunder for the term of this Agreement.

23. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including attorney's fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions or provisions hereof.

24. DRUG-FREE WORKPLACE POLICY: TIC, upon notification of contract award, shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, and the employee assistance programs available to employees. Each employee engaged in the performance of a CITY contract must be notified of this Drug-Free

Awareness Programs, and must abide by its terms. TIC shall conform to all the requirements of CITY'S Policy No. 100-5, attached hereto as Attachment No. 1. Failure to establish a program, notify employees, or inform the CITY of a drug-related workplace conviction will constitute a material breach of contract and cause for immediate termination of the contract by the CITY.

CITY OF COSTA MESA,
a municipal corporation

Dated: 10/7/96

By: Joe Enrich
Mayor

Dated: 10-8-96

By: Mary T. Elliott
Deputy City Clerk
of the City of Costa Mesa

THE IRVINE COMPANY



Dated: 9-3-96

By: Clarence W. Barker, President, Irvin
Title: Industrial & Business Properties Co
Address: 550 Newport Center Dr. Newport
Telephone: 720-2000 Beach, C
92660

APPROVED AS TO FORM:

Thomas Kathe 8-19-96
City Attorney

APPROVED AS TO CONTENT:

V. C. [Signature]
Project Manager

ADDENDUM NO. 1 TO AGREEMENT
FOR VERNAL POOL NUMBER 1 RESTORATION

THIS AGREEMENT, dated December 15, 1997, is made by the CITY OF COSTA MESA, a political subdivision of the State of California, ("CITY") and The Irvine Company, Post Office Box 6370, Newport Beach, California 92658-6370 ("TIC").

WITNESSETH:

A. WHEREAS, CITY has entered into an Agreement for Vernal Pool no. 1 Restoration, located within Fairview Park, with TIC on October 7, 1997, ("Agreement") attached hereto as Exhibit 1, and incorporated herein by this reference; and

B. WHEREAS, TIC has requested to extend the restoration program and license approved by Agreement to include additional habitat within Vernal Pool number 1 within such program.

NOW, THEREFORE, the parties agree as follows:

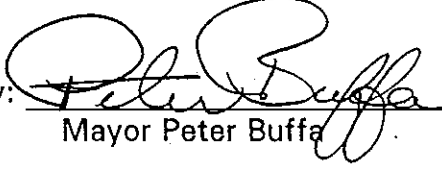
1. The license area identified in Section 1, Exhibit B, of the Agreement is amended as shown in Exhibit 2, attached hereto and incorporated herein by this reference.

2. TIC shall provide all restoration, monitoring and maintenance services for the license area as shown in Exhibit 2 and described in Exhibit "A" of the Agreement at TIC's expense and TIC shall obtain all permits and pay to CITY a one-time permit fee of \$12,000 for additional habitat added to the restoration program as set forth in this Addendum no. 1 to the Agreement.

3. Except as provided in this Addendum no. 1, all the terms and conditions of the Agreement shall remain in full force and effect.

CITY OF COSTA MESA,
a municipal corporation

Dated: Dec. 29, 1997

By: 
Mayor Peter Buffa

Dated: Dec. 30, 1997

By: Mary T. Elliott
Deputy City Clerk of the
City of Costa Mesa

THE IRVINE COMPANY

Dated: 12-11-97

By: Kenneth Koulton

Title: Senior Vice President

APPROVED AS TO FORM

Thomas Kall
City Attorney